

REMARKS

Claims 20-35 are pending in the application. Examination of the pending claims is respectfully requested.

Enclosed is an Application Data Sheet listing the correct inventorship for the above-identified application. Specifically, Applicants note that the Official Filing Receipt and the Published Application omit Chihiro Kobayashi as an inventor. Applicants respectfully request that the USPTO correct their databases to reflect the inventorship identified in the Declaration filed with the present application.

Claims 20-35 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims U.S. Patent No. 6,435,023. Applicants' respectfully traverse this ground of rejection.

M.P.E.P. § 804(II)(B)(1) describes the requirements of an obviousness-type double patenting rejection. This section states that the determination of obviousness-type double patenting requires an inquiry as to whether "any claim in the application define[s] an invention that is merely an obvious variation of an invention claimed in the patent." However, the Office Action has not identified a claim in U.S. Patent No. 6,435,023. Specifically, the Office Action states that claims 20-35 of the present application are unpatentable over "claims 0f of U.S. Patent No. 6,435,023."

The aforementioned section of the M.P.E.P. also states that an obviousness-type double patenting rejection should make clear the "differences

between the inventions defined by the conflicting claims” and the “reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent.” However, the Office Action only states that claims in the present application are similar to claims in U.S. Patent No. 6,435,023, without identifying the differences. Additionally, the Office Action has not provided reasons why a person of ordinary skill in the art would conclude that the claims of the present application are obvious in view of the claims of U.S. Patent No. 6,435,023.

Because the rejection of claims 20-35 of the present application for alleged obviousness-type double patenting does not identify any claims of U.S. Patent No. 6,435,023 in view of which they would be obvious, does not make clear the differences between the claims of the present application and U.S. Patent No. 6,435,023, and does not explain why one of ordinary skill in the art would have concluded that the claims of the present application are obvious in view of the claims of U.S. Patent No. 6,435,023, it is respectfully submitted that this rejection is improper and should be withdrawn.

Claims 20-24, 27, 28, 34 and 35 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,494,090 to Losing et al. (“Losing”). This ground of rejection is respectfully traversed.

Losing does not anticipate claims 20-24, 27, 28, 34 and 35 of the present application because Losing is not prior art with respect to the present application. The present application is a continuation of U.S. Patent Application

Nos. 10/036,509, filed January 7, 2002, and 08/784,077, filed January 17, 1997.

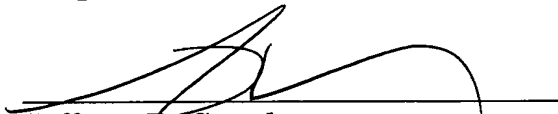
Losing was filed on May 5, 1999, and claims priority to a provisional application filed on May 6, 1998. Because the present application has an effective filing date, based on its continuation status, prior to the provisional application filing date of Losing, Losing does not constitute prior art against the present application. Accordingly, the rejection of claims 20-24, 27, 28, 34 and 35 is improper, and should be withdrawn.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #056207.43305C2).

Respectfully submitted,

January 31, 2005



Jeffrey D. Sanok
Registration No. 32,169
Stephen W. Palan
Registration No. 43,420

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
357949